

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DUANE ALLEN MILLS,

Petitioner,

v.

CASE NO. 08-14778
HONORABLE DENISE PAGE HOOD

BLAINE LAFLER,

Respondent.

_____ /

ORDER
DENYING PETITIONER'S MOTION FOR A CERTIFICATE
OF APPEALABILITY AND FOR APPOINTMENT OF COUNSEL, BUT
GRANTING LEAVE TO PROCEED *IN FORMA PAUPERIS* ON APPEAL

Petitioner Duane Allen Mills has appealed the Court's denial of his habeas corpus petition. Pending before the Court are Petitioner's motions for a certificate of appealability, for leave to proceed *in forma pauperis* on appeal, and for appointment of appellate counsel.

"[A] prisoner seeking postconviction relief under 28 U.S.C. § 2254 has no automatic right to appeal a district court's denial or dismissal of the petition. Instead, [the] petitioner must first seek and obtain a [certificate of appealability.]" *Miller-El v. Cockrell*, 537 U.S. 322, 327, 123 S. Ct. 1029, 1034, 154 L. Ed. 2d 931 (2003). A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

The Court concluded in its dispositive opinion that the trial court did not deprive Petitioner of retained counsel of choice or effective assistance of counsel and that the

prosecutor's conduct was either proper or not so egregious as to render the trial fundamentally unfair. The Court also concluded that Petitioner's trial attorney was not ineffective, that Petitioner's sentencing claims did not warrant habeas relief, and that Petitioner's appellate attorney was not ineffective for failing to raise all of Petitioner's habeas claims on direct review.

Reasonable jurists would not find the Court's assessment of Petitioner's claims debatable or wrong, nor conclude that Petitioner's claims deserve encouragement to proceed further. *Slack v. McDaniel*, 529 U.S. 473, 483-84, 120 S. Ct. 1595, 1603-04, 146 L. Ed. 2d 542 (2000). Consequently, Petitioner's motion for a certificate of appealability [Docket No. #24, filed July 25, 2011] and his motion for appointment of counsel [Docket No. 25, filed July 25, 2011] are **DENIED**. The motion to proceed *in forma pauperis* on appeal [Docket No. 23, filed July 25, 2011] is **GRANTED**, because the issues are not frivolous, and an appeal could be taken in good faith. 28 U.S.C. § 1915(a)(3).

s/Denise Page Hood
United States District Judge

Dated: August 9, 2011

I hereby certify that a copy of the foregoing document was served upon Duane Mills #507328, 10274 Boyer Road, Carson City, MI 48811 and counsel of record on August 9, 2011, by electronic and/or ordinary mail.

s/LaShawn R. Saulsberry
Case Manager